

TESTIMONY OF REP. JOHN TOWNSEND

2007 AB 489

SEPTEMBER 6, 2007

Thank you madam chair and members for hearing Assembly Bill 489 today. This bill seeks to protect adult adoptees from unwanted intrusions into their lives by their birthparents through the disclosure of private identifying information. We hope to strengthen the successful laws we have in place now that protect birth parents by ensuring that their relinquished adult children have at least the same protections.

Additionally, through the use of forfeitures, we hope to discourage some of the unscrupulous individuals and organizations who use the emotional aspect of a possible reuniting of birth parents and adoptees for financial gain, and in the process roll over privacy concerns of the individuals involved.

While I know there are well intentioned individuals who often volunteer to aid in a search for either a birth parent or an adoptee at no charge, their methods are sometimes less than ideal, and often the "Oprah moment" that is fantasized about never materializes. In fact, an unwanted reuniting can be a terrible experience; like that of Alisa Alfaro's whose testimony you have before you.

Because this issue often involves other individuals other than a birth mother and an adoptee, like spouses and other siblings for example, we want to make certain that we consider their privacy concerns as well. We welcome your recommendations and look forward to working with the committee and others in advancing a solid piece of legislation.

I'll be happy to take your questions.

My name is Alisa Alfaro. I am the proud daughter of Wilma and Jesse Alfaro and I am an adoptee seeking protection for the thousands of others like me. I would like to thank Representative Townsend for recognizing the need for and introducing this bill as well as the honorable members of this committee for providing me this opportunity to speak to you as you weigh Assembly Bill 489. The task before you will not be easy as you attempt to define a balance between one's need to know and another's right to privacy and I hope my testimony today will provide you with valuable insight into the issues of the adoption triad's right to privacy.

My adoptee status was not a defining factor in my life until seven years ago. My real family was like any other family in that they loved, disciplined and sacrificed for me and my brother. I do not have an identity crisis as their family tree is my family tree. Their values, morals and ethics are what define me today and I am proud to say I am their daughter. Just as they loved me without boundaries, I mourned their deaths as any daughter would regardless of the adoption as adoption creates the exception to the rule that blood runs thicker than water. They were my family and to this day, they remain my only real family despite their passing more than a decade ago.

Nothing is more offensive to me than to have someone ask me about my real family when in fact, they only mean my biological relatives. I grew up with my real family just like anyone else and know them much like you do your real mother and father. However, this is one of many public misconceptions but one that continues to grow due to the vocal minority. Speak to anyone and once they find out you're adopted, they expect that you must have to find your 'real' family. Another misconception is that all adoptees and members of the triad must want, if not need, reunion to "heal"; speak to anyone and tell them that you refused reunion and you're told you're in denial due to the pain of adoption. Tell someone that you never wanted to know the circumstances surrounding your conception and relinquishment and they're just in awe that you could be so cold. Open records to satisfy this vocal minority will only further the 'victim' status of an adoptee instead of empowering the silent majority. We should be empowered by our lives and the love of and for our families but we are instead vilified for forsaking the intrusion of reunion. We should be empowered for leading happy and productive lives but instead, we are told that surely, there must be some kind of detrimental effect from our adoptions. They are, in effect, stating that if something is not wrong with us as a result of our adoption, then something *is* wrong with us. I am not a victim of adoption but rather the victim of one's tunneled vision and expectation of reunion.

My family bond was tested and detrimentally intruded upon in February, 2000 when I received a letter from an adoption agency in Illinois stating that birth relatives were looking for me. Please note that this was not the same agency that handled my adoption but a completely different and unrelated agency; I am not aware that they handled any aspect of my adoption and believed my records were sealed from them and anyone else, including myself. I was immediately overcome with anger, frustration and despair but was relieved that my parents were not alive to see this happen. I immediately called the agency and emphatically, if not colorfully, told them I wanted nothing to do with the birth relatives and I wanted no further contact. I had, in fact, hung up and called back again with equally colorful language and by the time I hung up a second time, I falsely believed that I had gotten my point across that reunion was not an option.

The following week, much to my dismay, I received a phone call from the agency asking if I had changed my mind yet. These calls continued for several weeks and I was told that the birthmom just

wants to know how I'm doing (despite having given up those rights 31 years earlier); I was told that I owed it to her as she is the one that gave me life; I was told that she only needed to talk to me once to satisfy her curiosities. Despite being told so much, I was never told that an Opt-Out Affidavit allowing no contact was available. I knew my life had already changed due to this intrusion and I was not sure that it would ever end and could never be sure that the searching birth relatives would not get my information and contact me anyway. Although I said no several times, contact is repeatedly made until the hunted one eventually caves in to the coerced reunion. It would not be until several years later that I would find out this tactic is, not only common but encouraged with searchers.

Not all reunions result in the 'warm and fuzzy' pictures that we see on television or read about in our newspapers and other periodicals. Especially when one person is contacted out of the blue and coerced into the reunion. Two very public cases come to mind that failed to meet this expectation – the case of Carol Sandusky, an adoptee who was relinquished as a result of cruel abuse by the time she was six months old, and was hunted down by her birthfamily. There was nothing in place to keep the records sealed against the abusive mother; please keep in mind that the facilitator of this reunion was an employee of a state contracted agency – one who should have known about the abuse and the damage reunion could cause. Due to sovereign immunity, Carol was unable to recover any damages from the employee or the agency who released her contact information without her consent.

Another disturbing example is the case of Roger Siegel who was finally sentenced to three years in prison in 2006 for stalking his birthmother and her mother. The birthmother refused reunion as Roger was the product of rape and she wanted no lasting ties to the man who raped her. Once she refused requests for reunion, Roger inundated her and her mother with more than 500 faxes and 2000 phone calls. He went so far as to drive from California to New York and drop his 9 year old son off at her office so that she could see what she did to him almost 40 years earlier. Surprisingly, he had been previously acquitted of stalking her.

Unfortunately, remedies under current harassment and restraining order laws are not always available. There are jurisdictional issues as I was in Nevada, the agency was in Illinois and the catalyst for the search was in Wisconsin. Furthermore, since no harm to me or my family had been threatened and the calls did take place during normal business hours, the police did not feel I was being harassed and in fact, could not understand why I felt harassed and maybe I should just "talk to the lady". Even if I had a cause of action, which jurisdiction would have to issue the restraining order? Would I have to pay to get this filed and served? Would I need an attorney to navigate the maze of laws within the different jurisdictions? Most disheartening of all, why should I have had to go through this anyway? I thought my records were sealed and this could never happen to me.

Since my reunion, I have been on many sites and forums regarding adoption reunions and have been appalled and frightened at what I've seen. People encourage each other to keep contacting the hunted one because they're just "shocked" or in "denial" and they'll eventually get over it and come around to reunion. There are birthmothers who have said no to reunion only to have their adult children contact them and their secret blown out of the water. There is the birthmom who found the 18 year old son she relinquished and showed up at his place of employment. She couldn't understand why he was shocked and didn't want anything to do with her but she was encouraged by other members of the forum to keep trying. Lives are disrupted by this tunnel vision and our rights to privacy are somehow lost in this quest.

In addition to the upheaval and trauma unwanted and coerced reunions cause, the other by-product of this, yet equally important and disturbing, are the violations of privacy due to the access of my very personal information. How anyone, a search angel or licensed agency, could open MY sealed records or obtain my information by any other means is a violation of my privacy. If one is able to make the connection of Davina Marie Grebe, who existed for a mere six weeks to the person I am today, I can't help but wonder what private information of mine has been compromised?

While researching this issue, John Flynn of Representative Townsend's office found a link to our DMV on a search angel site. Surprisingly, one must only sign off that they are using this information for legitimate purposes but there is not a process in place to confirm that. Do these people have access to my DMV records? My credit reports? My past employment and residence? Access to my family and current employment? Recently, I couldn't receive my own medical records without signing a HIPPA form yet, an utter and complete stranger has access to my records without my knowledge or consent. With all of that information, I could very well become a victim of identity theft – what more information would they need?

While I am still bothered to this day about my reunion, this is not to say that some adoptees and members of the triad do not or should not have feelings of wanting to know. Many do and every day, mutual reunions take place satisfying the needs of both searching and mutually needing parties. There are a variety of reasons that people feel the need for reunion and I can not deny that – for them. However this is a very personal decision that can not be taken lightly and the reasons for reunion or refusal are as intimate as the people involved and we must have limits on how far they can go to satisfy that need to know.

This makes the passage of AB489 important on a number of levels. First, it recognizes those who do want reunion and allows quicker searches and reunions between those consenting adults. Some searches can take months, if not years, and AB489 will greatly reduce that time frame. It has, in effect, set up a mutual registry facilitating these reunions. Opponents of mutual registries would like to say that they do not work and point to Oregon's 4% 'success' rate as a 96% failure rate. I do not believe it is a failure; I believe that it shows that not everyone is interested in reunion but it did help the 4% who were.

While AB489 recognizes and facilitates reunions between consenting adults, it also recognizes the privacy rights of people like me. Searchers will go to any length to coerce a reunion with a total disregard towards the hunted one's feelings and desire to be left alone. AB489 recognizes one's right to privacy in that it allows people to opt-in rather than opt-out. Opting out does not work for individuals like myself – we are not concerned with our status and therefore, we are not looking for information of how to opt-out. We would have no idea that we should opt out in order to continue our lives whereas those searching and open to reunion have scoured the internet for information; search angels and licensed agencies would be aware of this law much like bill collectors are aware of the FDCPA and laws specific to each state. There should be no excuse for ignorance by these searchers.

AB489 should be used as model legislation for all states seeking a way to balance one's need to know with one's right to privacy. There is no blanket law that will satisfy everyone but I believe this law will err on the side of caution and protect my information and freedom to live my life without the

fear of being found. It will continue to recognize adoption as a process which creates familial bonds without the fear of intrusion. For those birthparents and adoptive parents who are open to communication, open adoptions are available. But for those who believed the records were sealed, this bill will protect their identities and allow them the right to their loving families.

We should also consider the children who have been relinquished due to abuse or neglect such as Carol Sandusky. Above all others, their right to privacy and a happy, fulfilling life should certainly be protected. They are the ones who could be most traumatized by being contacted by the very person who abused them. There is nothing in place to make sure that the privacy of these adults who were abused as children are protected.

I would also like to warn you that this is an emotionally charged topic of debate. You can expect to become the subject of email and telephonic campaigns from the vocal minority urging you to open sealed records. You will hear about those who want access to their medical records but Wisconsin currently has a process in place which will not be affected by this legislation. You will not, however, hear from those birthmothers who desire privacy because they will be forced to speak up about the very issue they desire to keep private. You will not hear from the silent majority of adoptees like me because they are not researching this topic; they are not concerned because they have a false sense of security due to the Court's sealing of records upon the adjudication of the adoption. We should, in fact, go one step further and define the 'good cause' arguments that Courts can use to open sealed court records in order to obtain identifying information. This is done quite often without the birthparents' or the adoptees' knowledge. The road ahead will not be easy but I urge you to consider the damage that has been done by coerced reunions and the privacy that has been ignored by these searchers.

Wisconsin's state motto is "forward" reflecting our desire to be a leader within our great nation. Live up to our motto of moving forward and thinking ahead. Be the first to comfortably balance one's need to know with one's right to privacy. Please allow this bill to move forward and become model legislation for the nation.

Again, I would like to thank each of you for your time and consideration of this necessary legislation to protect the family bonds created by adoption as well as the right to maintain the privacy of my records. Thank you.



National Council
For Adoption

THE BASIC RIGHTS TO PRIVACY AND CONSENT: HOW AB 489 BENEFITS ADOPTION

Lee A. Allen
Vice President, Communications
National Council For Adoption
September 6, 2007

CONSENT VERSUS COERCION: HOW AB 489 BENEFITS ADOPTION

If enacted, the unilateral confidentiality provisions of AB 489 would benefit the institution of adoption in Wisconsin and protect the fragile confidentiality of many innocent people involved in adoption. Adoption is a highly successful social institution that has wonderfully served needy children and birthparents who are unable or unready to parent. AB 489 would significantly stabilize current practice, by firmly establishing the option of confidentiality in adoption.

Privacy Rights in Adoption

The right to maintain or waive one's privacy in adoption is essential to the human rights and personal dignity of adopted persons, birthparents, and adoptive parents. Adoption policy and practice should not empower one party to adoption to receive identifying information or unilaterally impose contacts without the consent of another party. Birthparents and adult adopted persons who desire to have contact should be able to do so, when *both* agree. Otherwise, both should be able to control the release of their identifying information and whether and when contacts are to occur.

Search and reunion advocacy is commonplace in the media, but the range of views among birthparents, adopted persons, and adoptive parents regarding confidentiality and openness in adoption are actually as diverse and personal as they can be. The only just way to reconcile these varying views is through mutual consent, not unilateral coercion.

Other States' Policies

Very few states have adopted one-size-fits-all, mandatory-openness policies, and they are the aberration, not the trend. There are still 44 states that allow birthparents to control whether their identifying information will be released. Almost all states appropriately base their adoption records policy on the principle of mutual consent.

The Vocal Minority and Silent Majority

Unfortunately, the loudest voices the legislature and the general public are likely to hear opposing AB 489 belong to a small minority who demand the right for adopted persons to identify and contact their birthparents, with or without birthparents' consent. These activists are not adoption advocates. Their focus is on eliminating confidentiality in adoption, or "secrecy and shame," as they attempt to caricature it. When they target a state, they mobilize their national network to contact legislators. Because they are well organized, and because they mobilize their activists across the country not only in the target state, they seem to represent more people than they actually do.

On the other hand, the many parties to adoption who prefer privacy often cannot discuss their views publicly without sacrificing the very privacy they desire to protect. Birthparents who desire to maintain confidentiality must either remain mute while their rights are being taken away or lose their confidentiality in the very act of defending it. Of course, many adopted

persons are curious about their birthparents, but the vast majority of them do not search. The National Adoption Information Clearinghouse reports sources that 85 to 99 percent do not search. Whether they search or not, most adopted persons know who their parents are, the ones who raised them, and they are not interested in having the right to force themselves on their birthparents.

The Benefits of Protecting Confidentiality in Adoption

There are several ways that protecting the right to confidentiality in adoption would benefit adoption, children, families, and birthparents:

- **First, AB 489 would establish birthparents' basic human right to privacy.** AB 489 would protect birthparents' right to choose a confidential adoption, both retroactively and prospectively. To open records retroactively without the approval of a birthmother who was promised privacy is a particularly egregious violation of trust and common decency. For the typical birthmother, making an adoption plan for her child is a supremely loving act, committed in the best interests of her child. The state of Wisconsin should honor birthmothers for this act of love by ensuring them of their basic human right to privacy.

Under AB 489, future birthmothers in Wisconsin would be allowed to choose a private adoption, no matter what the circumstances of pregnancy or birth. Without the right to choose a confidential adoption, the birthmother who felt she must have privacy would have no choice but abortion.

There are any number of legitimate and understandable reasons that birthparents may desire privacy: perhaps, the birthmother does not want to relive the experience of rape or incest that caused the pregnancy; perhaps the birthparent would be psychologically or emotionally unable or unready to handle the stress of renewed contact; perhaps the birthparent does not want to upset his or her spouse, family, and friends with a never shared revelation; or perhaps the birthparent simply believes that the healthiest approach for all parties is not to have an ongoing relationship.

- **Second, AB 489 would decrease the number of unwanted, unilaterally imposed contacts.** Providing adult adopted persons identifying birthparent information without birthparents' knowledge or approval obviously increases the risk of unwanted, unilaterally imposed contacts. Unwanted reunions between adult adopted persons and birthparents are often highly disruptive and unsatisfactory for everyone involved, despite the rosy scenarios sometimes portrayed in the media. Even when adopted persons and birthparents mutually consent to contact, their satisfaction with reunions and ongoing relationships is quite unpredictable. Thousands of Wisconsin birthparents, around the country and world, are depending on this legislature to defend their right to privacy.
- **Third, AB 489 would affirm the strength of the adoptive family.** A chief reason adoption has been so successful is because society and law have respected the adoptive family as the child's true and permanent family. By preventing one side to force themselves on the other, the state of Wisconsin would establish as the legal norm and the cultural expectation that adopted persons and their birthparents will maintain the right to choose to disclose or not disclose personal information. The bill states this intent expressly by providing for media campaign that would

“encourage participation in the initiatives established pursuant to this act.” Such a policy would send the positive message that adoptive families and birthparents are capable of making personal decisions about the level of confidentiality they require. This message affirms a very foundation of adoption, that the adoptive family is the child’s true and permanent family. Adoptive parenting has provided untold social and familial blessings to children throughout the years. Law and society must continue to respect the adoptive family’s status as the adopted person’s true and permanent family, in order for those benefits to continue.

- **Fourth, AB 489 would put an end to the myth that adopted persons face debilitating identity problems** that can only be resolved by mandatory open records and reunions with birthparents. The erroneous assumption of mandatory open-records advocates is the false and demeaning notion that in order to be psychologically healthy, all adopted persons must fulfill a deep-seated need to have identifying information about, and contact with, their biological parents. The truth is, however, that the vast majority of persons adopted at a young age accepts their adoption readily, and grow up to be successful, happy, stable adults at the same rate as people raised in their biological families. While many adopted persons indicate a curiosity about their biological parents, very few profess anything approaching a need for identifying information or contact. Fewer still would favor having the right to impose themselves on birthparents against their will, and only a small percentage actually searches.¹
- **Fifth, AB 489 would add increase the adopted person’s ability to obtain medical or social information.** Wisconsin law would allow for adopted persons to obtain birthparent health history and social information contained in adoption records without sacrificing confidentiality.

AB 489: A Just and Commonsense Solution – the Mutual Consent Registry

Birthparents and adult adopted persons who desire to exchange identifying information and/or have contact with each other should be allowed to do so. Wisconsin should immediately enact and advertise a mutual consent registry to facilitate these exchanges and authorize what the Department of Human Services is already doing. Mutual consent registries assist these contacts while preserving the rights of birthparents (and adopted persons) to choose privacy. The majority of the 50 states have already enacted mutual consent registries, which provide for birthparents and adult adopted persons to exchange identifying information and contact each other, when *both* parties agree.

To address the concern that adopted persons and birthparents may not be aware of the existence of the registry, the legislature should appropriate sufficient funds to advertise it. Of course, in states that have mutual consent registries, searchers do not have to search very hard to discover that the registry exists. So, the fact that some who register do not find a match does not mean that the registry does not work. The more likely explanation is that those who do not register simply choose not to share identifying information or have contact. People who so choose should be allowed to keep their privacy.

¹ *Growing Up Adopted: A Portrait of Adolescents and Their Families*, by Peter L. Benson, Ph.D., Anu R. Sharma, Ph.D., L.P., and Eugene Roehlkepartain, Search Institute, Minneapolis, MN, 1994.

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To: Members of the Assembly Committee on Children and Family Law

From: Katie Plona
Legislative Liaison

Date: September 6, 2007

RE: 2007 Assembly Bill 489

Rep. Owens and committee members, thank you for the opportunity to testify today regarding Assembly Bill 489. I am testifying for informational purposes only on behalf of the Department of Health and Family Services.

DHFS supports Rep. Townsend's efforts to help birth parents and birth children who want to reconnect. However, there are some provisions in the bill that raise questions about potentially unintended consequences and concerns we want to bring to your attention.

AB 489 will expand the options for information sharing between birth children and birth parents. However, the bill's increase in access to information must be weighed against the privacy concerns of people who have not consented to a release of their identity. This change will potentially impact the privacy of adoptive parents, biological siblings and birth parents of the birth child who files an affidavit with the Adoption Records Search Program at DHFS.

Three potential scenarios under AB 489:

- A birth mother has her parental rights terminated to several children, and they are placed in the same adoptive home. The oldest child turns 18 and files an affidavit and that child's identify and location are released to the birth parent. That release of identity is very likely to release the identity of all the younger siblings and the adoptive parents.
- The same concerns would apply if the birth child was deceased and his or her identity was released. The adoptive parents may have particularly strong objections to the release of information about their child to a third party, especially with no affidavit from the birth child. The Division also notes that the bill prohibits the Adoption Records Search Program from searching for a birth child, so the Program would not generally have knowledge that an adoptee is deceased.
- A birth child could file an affidavit, and one of his or her birth parents could request the identity of that birth child. The child's identify would then be released to the requesting birth parent, who could potentially release the identity of the other birth parent who did not authorize the release of that information to the child.

Requested Changes

The Department recommends that Section 26 of the bill, which prohibits a birth parent from contacting a birth child who has not filed an affidavit, be broadened to include individuals or entities that are acting on behalf of a birth parent with or without the knowledge of the birth parent.

AB 489 creates a definition of a birth child, which includes a child whose birth parent's parental rights were terminated. The Department recommends also changing the current definition of birth parent in s. 48.433(1), Stats., to mirror the proposed definition of a birth child. The current definition of a birth mother does not limit the definition to the mother whose parental rights were terminated.

As a result, when researching step-parent adoption cases for a birth father, the Program is required to have the mother of the child sign an affidavit of consent to release her information even though she is the child's mother, she raised the child and the child is not looking for his or her mother's identify.

Under current law, it is very difficult for adoptees or birth parents to stop private entities that are circumventing the Adoption Records Search Program to locate children or birth parents who do not want to be located. AB 489 creates a penalty for contacting an adopted child outside the affidavit process. However, the penalty provisions of AB 489 under Section 26(c) do not specify enforcement procedures. The Department would appreciate further guidance on what entity will be responsible for enforcing the fine for violating the requirements of the bill. The Department would also note that the current proposal of a \$5,000 penalty may not be enough to deter private entities from disclosing confidential information or contacting adopted children and adoptive parents outside of the scope of this bill and current law.

Additionally, Section 25 of the bill appears to allow a court to release the identity of a birth child who has not filed an affidavit if good cause is shown. This is because AB 489 makes the birth parent a requester under the statute. The Department recommends that this be revised not to allow a court to release a birth child's identity without the child's consent.

DHFS also recommends the bill be amended to clarify the author's intent to only authorize the release of the identity and location of the birth child on the affidavit when requested by a birth parent and an affidavit is on file, no other information is to be released.

This concludes my prepared remarks. Thank you again giving me the opportunity to provide the department's feedback on AB 489 to this committee. We look forward to working with committee members and Rep. Townsend on this bill.

If you have any questions for me at this time, I am going to ask Jacy Boldebuck and Judy Ranney from the Adoption Records Search Program to join me to help answer specific questions you may have about how the program works and what experiences they have had.